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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,811	02/06/2002	Lori Greiner	13345.45US01	8440

22859 7590 09/17/2003

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EXAMINER

SZUMNY, JONATHON A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 09/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/068,811

Applicant(s)

GREINER, LORI

Examiner

Jon A Szumny

Art Unit

3632

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 44,50-71,75-88,91 and 92.

Claim(s) withdrawn from consideration: 72-74,89 and 90.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 16.

10. ☐ Other: _____

RAMON O. RAMIREZ
PRIMARY EXAMINER
ART UNIT 355

1C'068,811

Continuation of 2.

NOTE: The Examiner will attempt to address all pertinent remaining issues.

On the bottom of page 9 and top of page 10 of the remarks, and in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is clearly interpreted that modifying the invention of Levensten '427 so as to have a plurality of lift out trays as in Simonsen '409 would provide for a more organized container/chest/box/etc. which would naturally be a common goal in the art. Further, the applicant speculates that an ordinary artisan utilizing the invention of Levensten '427 would "want to store large items such as hammers, wrenches, for example, in that section (top section) of the box or chest," and for that reason, would be dissuaded from making such a modification since doing so would not allow the artisan to store hammers, wrenches, etc. in the lift out drawers. The Examiner disagrees. To begin, the applicant provided no page or line number stating exactly where Levensten '427 states that such tools MUST be stored in the top section, nor where Levensten '427 states that tools stored in the top section span the entire length of the top section so as to preclude their being stored in a smaller section, ie) one of the lift out drawers. Further, the Examiner interprets the lift out drawers to be able to accommodate many different sized tools. ③/1/03

On the bottom of page 10 and top of page 11 of the remarks, the applicant states that one can gain access to the upper compartment of Simon 202 by pushing in the direction of the arrow of figure 8, and further that modifying Simon '202 so as to include lift out drawers as in Simonsen '409 would destroy this function. The Examiner completely disagrees. Although lines 38-46 of column 5 of Simon '202 do in fact state that access to the upper compartment is provided via sliding the member 4, with reference to figure 1, it appears that access is actually provided to the lower compartment 24 by such sliding motion. Access is provided to the upper compartment via opening the lid. However, such is interpreted to be immaterial to the modification as presented by the Examiner. The modification the Examiner is making is just modifying the upper compartment so as to have the lift out drawers; it is not destroying the relative sliding movement of the upper and lower compartments, as is understood to be alleged by the applicant.

